SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4284-14T1

JOHN VASQUEZ AND 21st AVE TOWING & RECOVERY, INC.,

Plaintiffs-Appellants,

v.

PACIFIC ASSOCIATES CORPORATION, SHAIN MERCER a/k/a SHAIN MANAKTALA, GENESIS COMMERICIAL CAPITAL, L.L.C. d/b/a GENESIS CAPITAL LEASING,

Defendants-Respondents,

and

LYON FINANCIAL SERVICES, INC., d/b/a U.S. BANCORP MANIFEST FUNDING SERVICES, AND U.S. BANK EQUIPMENT FINANCE, INC.,

Defendants.

Submitted October 18, 2016 – Decided January 17, 2017

Before Judges Koblitz, Rothstadt and Sumners.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-4564-14.

Law Offices of Michael Makarov, LLC, attorneys for appellants (Mr. Makarov, Daniel Masi and Brian Harra, on the brief).

Sobel Han LLP, attorneys for respondents (D. Sam Han, on the brief).

PER CURIAM

In this dispute involving the lease of a commercial vehicle, plaintiffs John Vasquez and 21st Ave Towing & Recovery, Inc. appeal an April 10, 2015 order dismissing their complaint based on the principle of res judicata. Having considered the parties' arguments in light of the record and applicable legal standards, we affirm.

I.

We begin with a brief background, reciting only those facts and procedural history relevant to our decision. Vasquez is the owner and operator of 21st Ave, which does business in New Jersey. On March 9, 2007, 21st Ave, with Vasquez' personal guaranty, entered into a lease agreement for a tow truck that was financed by Pacific Associates Corporation, a lending company incorporated and operating mainly in California.

When Vasquez made the last lease payment in October 2012, he paid an additional dollar to take advantage of what he thought was a one-dollar-buy-out clause in the lease agreement that gave him ownership of the vehicle. According to Vasquez,

Pacific's President Shain Mercer told him prior to signing the lease agreement that it had the clause which would allow the purchase of the tow truck upon paying one dollar with the final lease payment.

Vasquez was subsequently advised by Genesis Capital Leasing, an agent of Pacific and also a California company, that there was no buy-out clause in the lease agreement.[1] Vasquez was instructed that since the agreement expired, his only options were to renew the lease, purchase the vehicle, or surrender the vehicle. After Vasquez failed to exercise any of these choices, Pacific exercised the lease agreement's forum selection clause and filed a complaint in California state court against Vasquez and 21st Ave alleging damages resulting from a breach of contract. On May 7, 2013, a default judgment for money damages and re-possession of the leased vehicle was entered after Vasquez and 21st Ave failed to file an answer. No appeal was filed.

In July 2013, Pacific's judgment was domesticated in New Jersey and a Writ of Replevin was issued. Vasquez and 21st Ave, subsequently filed an Order to Show Cause seeking to vacate the docketing of the foreign judgment. After granting the temporary

[1] Admittedly, Vasquez did not read the lease agreement before signing it.

restraint of staying replevin of the tow truck, Judge Thomas F. Brogan entered an order on October 3, 2014, denying plaintiffs' request to vacate the docketing of the domesticated foreign judgment, and removing the temporary restraint. Judge Brogan found that California had "personal jurisdiction over [plaintiffs] by virtue of the forum select[ion] clause and minimum contacts . . . thus the judgment must be attacked in California where it was entered. Any other defenses to the validity of the contract also must be asserted in California."

Plaintiffs did not appeal Judge Brogan's order. Instead, on December 15, 2014, they filed a complaint against defendants, Pacific, Shain Mercer aka Shain Manaktala, Genesis d/b/a Genesis Capital Leasing, Lyon Financial Services, Inc., d/b/a U.S. Bancorp Manifest Funding Services, and U.S. Bank Equipment Finance, Inc., alleging unconscionable commercial practices under the Consumer Fraud Act, N.J.S.A. 56:8-2, common law fraud, harassment, intentional infliction of emotional distress, breach of contract, assignee liability, and breach of covenant of good faith and fair dealing. In lieu of filing an answer, defendants Pacific, Mercer, and Genesis filed a motion to dismiss the complaint contending lack of subject matter jurisdiction, Rule 4:6-2(a), lack of personal jurisdiction over defendants, Rule

4:6-2(b), and failure to state a claim upon which relief can be granted, Rule 4:6-2(e).[2]

On April 10, 2015, the court granted the motion and entered an order dismissing plaintiffs' complaint. In his written statement of reasons, the motion judge found that plaintiffs' claims were barred by res judicata due to Judge Brogan's October 3, 2014 order, and that plaintiffs waived their right to file a lawsuit in New Jersey by agreeing to forum selection in the California courts. The judge also determined that, given the lack of ambiguity in the lease agreement, plaintiffs' allegation that there was a verbal agreement including a one-dollar-buyout clause was barred by the parol evidence rule. Plaintiffs' remaining arguments were denied as moot. This appeal followed.

II.

Our review of a trial court's dismissal of a complaint pursuant to Rule 4:6-2 motion is de novo. Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 287 (App. Div. 2014). "[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Green v. Morgan Props., 215 N.J. 431, 451 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). Accordingly,

[2] Lyon Financial Services, Inc. and U.S. Bank Equipment Finance, Inc. settled the claims against them.

"[t]he essential test is simply 'whether a cause of action is "suggested" by the facts.'" Ibid. (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). Thus, we must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Id. at 452 (quoting Printing Mart-Morristown, supra, 116 N.J. at 746).

Our review is "one that is at once painstaking and undertaken with a generous and hospitable approach." Ibid. (quoting Printing Mart-Morristown, supra, 116 N.J. at 746). Nonetheless, dismissal is required "where the pleading does not establish a colorable claim and discovery would not develop one." State v. Cherry Hill Mitsubishi, Inc., 439 N.J. Super. 462, 467 (App. Div. 2015) (citing Camden Cnty. Energy Recovery Assocs. v. N.J. Dep't of Envtl. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), aff'd o.b., 170 N.J. 246, 786 (2001)).

Applying these standards, we are convinced that plaintiffs' complaint should be dismissed with prejudice, however, for a slightly different reason than articulated by the motion judge. See State v. Deluca, 325 N.J. Super. 376, 389 (App. Div. 1999) (stating that an appellate court may affirm the trial court's order for reasons other than those of the trial court), aff'd as

modified, 168 N.J. 626 (2001). It is the California court's entry of default judgment against plaintiffs, where they were defendants, not Judge Brogan's subsequent order, that bars the present action.

Although the merits of an action are typically decided at a trial, "[u]nder the principles of res judicata[,] claims that are actually litigated and determined before trial also are barred from being relitigated." Velasquez v. Franz, 123 N.J. 498, 506 (1991) (citing Restatement (Second) of Judgments § 27 comment d (1982)). The principle "contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to relitigation." Lubliner v. Bd. of Alcoholic Beverage Control, 33 N.J. 428, 435 (1960). Application of res judicata "requires substantially similar or identical causes of action and issues, parties, and relief sought," as well as a final judgment. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989). "[A] motion to dismiss for failure to state a claim is an adjudication on the merits for res judicata purposes, unless the judge specifies that it is 'without prejudice.'" Velasquez, supra, 123 N.J. at 507 (citing Fed. R. Civ. P. 41(b))[3].

[3] The language of Fed. R. Civ. P. 41(b) has changed since the Velasquez court quoted the rule in its reasoning. However, the (continued)

To decide if two causes of action are the same, the court must determine:

> (1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions); (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first); and (4) whether the material facts alleged are the same.
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> [Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 606-07 (2015) (quoting Culver, supra, 115 N.J. at 461-62).]

When the lease agreement expired and plaintiffs did not enter into a new agreement to lease or purchase the tow truck and kept possession of it, Pacific sued them in California state court based upon the agreement's forum selection clause. The subsequent default judgment against plaintiffs resulted in a final decision on the lease dispute. Plaintiffs' present claims arise from the lease agreement, and should have been plead as a counterclaims in the California action. However, that

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(continued)
current text reflects the same operation: "Unless the [involuntary] dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits."

opportunity was voluntarily foreclosed when plaintiffs allowed a default to be entered that was not appealed. The same evidence needed in the present action would have been necessary to support the counterclaims. Consequently, plaintiffs' complaint should be dismissed with prejudice by res judicata as a result of the judgment entered against plaintiffs in California.

As a result of concluding that res judicata bars plaintiffs' claims, we need not address the additional reasons given by the motion judge to grant defendants' motion to dismiss.

Affirmed.